

# **Settlement Agreement**

**The Securities Commission**

**and**

**Nuplex Industries Limited**

**and**

**John William Arthur Hirst, Robert Murray Aitken, Barbara June Gibson, David Alexander Jackson, Bryan Norreys Kensington and Michael Rodney Wynter**

**Date: 22 February 2011**

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This **Settlement Agreement** is made on 22 February 2011

- between (1) **The Securities Commission (the Commission)**
- and (2) **Nuplex Industries Limited (Nuplex)**
- and (3) **John William Arthur Hirst, Robert Murray Aitken, Barbara June Gibson, David Alexander Jackson, Bryan Norreys Kensington and Michael Rodney Wynter (together the Directors)**

## Background

- A. The Commission is the plaintiff in court proceedings filed in the Commercial List of the High Court with court reference number CIV 2010-485-630 (the **court proceedings**). Nuplex is the first defendant in the court proceedings and the Directors, who were the directors of Nuplex in the period 22 December 2008 to 18 February 2009, are the second to seventh defendants in the court proceedings.
- B. The Commission alleges in the court proceedings that Nuplex breached the continuous disclosure provisions in NZSX Listing Rules 10.1.1(a) and 10.1.1(c) and thereby breached section 19B of the Securities Markets Act 1988 by failing to announce to the market between 22 December 2008 and 18 February 2009 (the **relevant period**) that Nuplex expected to breach and/or had breached the senior debt cover ratio (the **SDCR covenant**) in its bank facility agreements. The Commission alleges that the Directors were parties to that breach by Nuplex.
- C. Nuplex and the Directors have denied those allegations and filed statements of defence in the court proceedings.
- D. The Commission, Nuplex and the Directors have agreed to resolve the matters raised in the court proceedings on the terms of this Settlement Agreement.

## It is agreed

- Nuplex acknowledges that, once it was apparent to the company that the SDCR covenant would be breached as at 31 December 2008, this was Material Information which should have been disclosed to the market and that Nuplex was therefore in breach of the continuous disclosure rules in NZSX Listing Rules 10.1.1(a) and 10.1.1(c) and thereby in breach of s 19B of the Securities Markets Act 1988.
- Nuplex is to make available the sum of \$3,054,980.57 (the **compensation sum**) as compensation available to shareholders who purchased and retained shares in Nuplex during the relevant period (**qualifying shareholders**). Nuplex is to pay the compensation sum to qualifying shareholders as follows:
  - Nuplex is to offer to every qualifying shareholder a pro-rata share of the compensation sum, being an amount calculated as follows:

$$(\$3,054,980.57 \div A) \times B$$

where:

A is the total number of Nuplex shares purchased during the relevant period

*B* is the number of shares purchased by the qualifying shareholder during the relevant period minus the number of shares disposed of by the qualifying shareholder during the relevant period

- (b) Nuplex is to send the offer, in the form attached as Schedule A, by post to every qualifying shareholder at the address for that qualifying shareholder recorded on Nuplex's share register. Nuplex is not required to send the offer to any qualifying shareholder for whom the amount of compensation calculated using the above formula is zero or negative.
  - (c) The offer is to remain open for a period of 60 days from the date on which the offer is sent.
  - (d) It is to be a condition of the offer made by Nuplex to every qualifying shareholder that acceptance of the offer is a full and final settlement by that qualifying shareholder of any claim against Nuplex or its past or present directors or officers in relation to the facts and matters alleged in the court proceedings.
  - (e) Nuplex is to make all payments due to qualifying shareholders who accept the offer within 14 days of the date on which the offer closes.
  - (f) Nuplex is entitled to retain any part of the compensation sum not paid to qualifying shareholders pursuant to the offer described above.
  - (g) In performing its obligations under this clause 2, Nuplex is entitled to rely on the accuracy of its share register.
  - (h) As soon as reasonably practicable after the offer closes and payments have been made, Nuplex is to provide to the Commission a report setting out the total amount of compensation paid to qualifying shareholders and any further information in relation to the offer and payment of the compensation sum reasonably requested by the Commission.
  - (i) If it becomes impracticable for Nuplex to implement the offer process set out in this clause 2, Nuplex and the Commission will endeavour in good faith to agree on a variation to this Settlement Agreement so as to give effect to the intended outcome.
3. Within seven days of the date of this Settlement Agreement, Nuplex is to pay to the Commission the sum of \$98,127.53 (including GST of \$2,007.06) as a contribution to the Commission's costs and disbursements in relation to the court proceedings and a further sum of \$50,000 as a contribution to the Commission's investigation costs.
  4. The acknowledgement by Nuplex in clause 1 above is made as between Nuplex and the Commission only and is neither an admission of liability to any other person nor an admission that the matters acknowledged caused loss to any other person.
  5. The Commission and Nuplex agree to issue a media release in the form attached as Schedule B. The Commission, Nuplex and the Directors are not to make any public statement in relation to the court proceedings or this Settlement Agreement which contradicts anything in the agreed media release.
  6. Entry into this Settlement Agreement is a full and final settlement of the matters raised in the court proceedings and, within two working days of execution of this Settlement Agreement, the parties will file a notice of discontinuance providing for the court proceedings to be discontinued with no costs payable.
  7. All dollar amounts in this Settlement Agreement are New Zealand dollars.

SCHEDULE A – OFFER LETTER

[Name and address of shareholder]

**Offer of compensation to shareholders pursuant to settlement with the Securities Commission**

We are writing to advise you of the terms of a settlement reached between Nuplex Industries Limited (Nuplex) and the Securities Commission under which you, as a qualifying Nuplex shareholder, are entitled to receive this offer of compensation. The settlement is described in the joint statement reproduced on the reverse side of this letter.

The settlement provides for compensation to be paid to those Nuplex shareholders who purchased shares between 22 December 2008 and 18 February 2009. The agreed compensation sum payable to each shareholder is:

$$(NZ\$3,054,980.57 \div A) \times B$$

where:

*A* is the total number of Nuplex shares purchased during the relevant period

*B* is the number of shares purchased by the qualifying shareholder during the relevant period minus the number of shares disposed of by the qualifying shareholder during the relevant period

The enclosed Shareholder Details Form shows the number of Nuplex shares you purchased and disposed of between 22 December 2008 and 18 February 2009, and the amount of compensation you are entitled to receive if you choose to accept this offer.

Your acceptance of this offer will be a full and final settlement by you of any claim against Nuplex or its past or present directors or officers in relation to the facts and matters alleged in the court proceedings described in the attached joint statement.

If you wish to accept this offer, you must complete the enclosed Acceptance Form and return it to Nuplex following the instructions on the Acceptance Form. Acceptance Forms must be received no later than [closing date].

If you require advice in relation to this offer, we recommend that you contact your solicitor or financial adviser.

If you are a trustee corporation or a nominee company and purchased Nuplex shares between 22 December 2008 and 18 February 2009 as a custodian, please see the separate Notice to Custodian Shareholders enclosed with this letter.

Yours faithfully  
Nuplex Industries Limited

*[to be enclosed with Offer Letter]*

### Notice to Custodian Shareholders

This additional notice should be read together with the Offer Letter and is relevant only if you are a custodian shareholder, meaning a Nuplex shareholder that:

- (a) Is a trustee corporation or a nominee company; and
- (b) Purchased Nuplex shares between 22 December 2008 and 18 February 2009 (the **relevant period**) by reason only of acting for another person in the ordinary course of business as a trustee corporation or nominee company.

The information on the Shareholder Details Form is based on purchases and dispositions by you as the registered shareholder over the relevant period, and therefore calculates a net acquisitions figure by deducting total dispositions from total purchases. If that net figure were calculated individually for each beneficial owner on whose behalf you held shares, it may result in a different total compensation figure. Nuplex is therefore prepared to pay compensation calculated on the following terms (in lieu of the calculation shown on the Shareholder Details Form):

1. Within 30 days of the date of the Offer Letter sent with this Notice, you provide to Nuplex:
  - (a) For each beneficial owner on whose behalf you were registered on Nuplex's share register as the holder of Nuplex shares during the relevant period:
    - (i) The number of Nuplex shares purchased by you through transactions conducted on the equity securities markets operated by NZX Limited and ASX Limited during the relevant period for that beneficial owner;
    - (ii) The number of Nuplex shares disposed of by you through transactions conducted on the equity securities markets operated by NZX Limited and ASX Limited during the relevant period for that beneficial owner;
    - (iii) The net number of Nuplex shares acquired during the relevant period for that beneficial owner (i.e. total purchases under (i) above minus dispositions under (ii) above);
    - (iv) A release of liability signed by the beneficial owner in the form attached;
    - (v) Confirmation and evidence that you hold Nuplex shares as a custodian shareholder (as defined above) for the beneficial owner.
  - (b) The total of the net number of Nuplex shares purchased during the relevant period by every beneficial owner on whose behalf you held Nuplex shares during the relevant period (that is, the total of the net figures referred to in clause 1(a)(iii) above) and who has provided a release of liability in accordance with clause 1(a)(iv) above (the **total net acquisitions**);
  - (c) Any additional information reasonably requested by Nuplex;
  - (d) Certification by your Chief Executive Officer (or equivalent office holder) that all information provided under this clause 1 is correct in accordance with your records;
  - (e) Confirmation that you elect to have compensation referred to in the Offer Letter calculated in accordance with this Notice in lieu of the figure contained on the

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Shareholder Details Form enclosed with the offer letter (which election is to be irrevocable); and

2. If satisfied with the accuracy of the information provided to it and subject to clause 4 below, Nuplex will within a further period of 30 days after the expiry of the 30 day period referred to in clause 1 above pay to you for distribution to beneficial owners an amount equal to NZ\$[] multiplied by the total net acquisitions.
3. You will then distribute this amount to each beneficial owner referred to in clause 1(a) in the relevant proportions, and Nuplex is to have no responsibility for that distribution.

**SCHEDULE B – AGREED MEDIA RELEASE**

In April 2010, the Securities Commission commenced civil proceedings against Nuplex Industries Limited and six of its present or past directors, John Hirst, Robert Aitken, Barbara Gibson, David Jackson, Bryan Kensington and Michael Wynter. The Commission alleged in those civil proceedings that Nuplex should have announced to the market a forecast and (subsequent) confirmed breach by Nuplex of the Senior Debt Cover Ratio covenant in its banking facility agreement as at 31 December 2008. The Commission alleged that this was Material Information and therefore that the failure to announce it to the market was a breach of the continuous disclosure rules in the NZSX Listing Rules and thereby a breach of section 19B of the Securities Markets Act 1988. The Commission also alleged that the defendant-directors were a party to that breach by Nuplex.

The parties have reached a full and final settlement of the matters raised in the Commission's proceedings.

As part of that settlement, Nuplex will make available a sum of NZ\$3,054,980.57 as compensation for all shareholders who purchased and retained shares in Nuplex over the period from 22 December 2008 to 18 February 2009. Nuplex will shortly write to all shareholders who purchased and retained shares over that period setting out the terms of the offer of compensation. This offer is to be made on equal terms to all Nuplex shareholders who purchased and retained shares over that period whether they purchased those shares by trades conducted on NZX or ASX.

Nuplex acknowledges that, once it was apparent to the company that the SDGR covenant would be breached as at 31 December 2008, this was Material Information which should have been disclosed to the market and that Nuplex was therefore in breach of the continuous disclosure rules in NZSX Listing Rules 10.1.1(a) and 10.1.1(c) and thereby in breach of s 19B of the Securities Markets Act 1988.

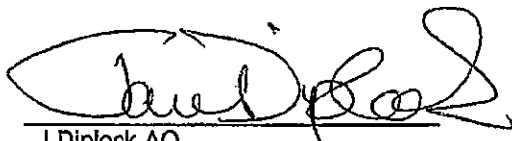
Nuplex has also agreed to pay NZ\$148,127.53 as a contribution to the Commission's investigation and court costs.

The Commission's court proceedings against Nuplex and the directors will now be discontinued.


**Execution**

**Executed as a settlement agreement.**

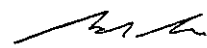
**The Securities Commission by its  
authorised signatory:**

  
\_\_\_\_\_  
J Diplock AO

**Nuplex Industries Limited by its  
authorised signatory:**

  
\_\_\_\_\_  
D J Cooper

**John William Hirst, Robert  
Murray Aitken, Barbara June  
Gibson, David Alexander  
Jackson, Bryan Norreys  
Kensington and Michael Rodney  
Wynter by their authorised  
signatory:**

  
\_\_\_\_\_  
A J Horne